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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 1223

KARL H. MEYER,

Petitioner,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

BRIEF IN OPPOSITION.

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QUESTIONS PRESENTED.

Whether there is any conflict of decisions as to the validity of Section 11-33 of the Municipal Code of Chicago?

Whether the record supports the trial court's finding that the petitioner interfered with a police officer in the discharge of his duties?

Whether the ordinance is vague and overbroad in its terms?

STATEMENT OF FACTS.

Prior to the date of arrest, the petitioner had been making speeches against the war in Viet Nam at the same location without incident (Rept. of Proc. pp. 38-39).[1] The police department knew of these speeches and detailed men there as a measure of precaution. There had been no arrest up to this time and there is no evidence showing that the police department had interfered in any way with the petitioner's speeches. The location of these speeches was in the middle of an area known as "Old Town"; which is highly congested and a well known tourist attraction (Rept. of Proc. pp. 25-29). The forum used was the public sidewalk which was about 12 feet wide at this point.

The undisputed facts disclose that on Friday, July 14, 1967, at about 8:45 P. M., the petitioner began speaking and attracting the attention of passers-by (Rept. of Proc. p. 12). He was accompanied by four or five sympathizers who also took turns speaking (Rept. of Proc. p. 15). The petitioner was standing on a five gallon can; he had a large sign behind him and there was a shopping cart filled with pamphlets to one side (Rept. of Proc. p. 12). A crowd of about 100 to 200 people had gathered, and the sidewalk was completely obstructed, and pedestrians in order to pass were required to walk into the street (Rept. of Proc. pp. 31, 35). About 11:00 P. M. the gathering became loud and boisterous. Two men who were aides to the petitioner came up to a policeman and told him there was a fight beginning to form within the group and that the sign behind the petitioner was pulled down and was being burned along with the pamphlets (Rept. of Proc. p. 17). A person sympathetic

1. Petitioner in citing authority for certain points has referred to the record by making the designation R. ..... It should be noted that the references cited are not to the record pages, but instead to the Report of Proceedings. Therefore all reference in the Brief in Opposition are to the Report of Proceedings.

to the petitioner picked it up, and a fight was about to ensue over this incident when Police Sergeant O'Malley appeared and calmed the situation (Rept. of Proc. pp. 40-42). Later some spectators came back and took the leaflets and set them on fire. It was only at this point that Sergeant O'Malley with aid of officer Highland and others ordered the crowd and the speechmakers to disperse (Rept. of Proc. pp. 17, 41). The petitioner was asked to leave but he refused saying "I will not leave. You can arrest me if you please" (Rept. of Proc. p. 33).

Sergeant O'Malley testified that he had been assigned to protect the demonstrators, that he had been present at some 500 demonstrations in the past two years and that in his estimation there was a diversion tending toward a breach of the peace (Rept. of Proc. pp. 16-17). The petitioner admitted there was a great tenseness in the crowd, but that he was not concerned about it because he believes in nonviolence (Rept. of Proc. p. 50). The petitioner also admitted that the crowd was hostile and the situation on July 14, 1967, was different from prior dates inasmuch as there were disturbances, near breakouts of fights and burnings (Rept. of Proc. pp. 48-49).

Petitioner was charged with violating Section 11-33 (interfering with a police officer) and Section 193-1 (disorderly conduct) of the Municipal Code of Chicago. Judgment was entered against the petitioner and fines of $200.00 for violating the disorderly conduct ordinance and $100.00 for violating the resisting arrest ordinance were imposed (Rept. of Proc. pp. 52-54).

On direct appeal to the Illinois Supreme Court the disorderly conduct judgment was reversed (See 193-1) but the finding that the petitioner had interfered with a police officer in the discharge of his duties was affirmed (Sec. 11-33). No petition for rehearing was filed in the Illinois Supreme Court.

REASONS FOR DENYING THE WRIT.

For the following reasons a writ of certiorari should not issue to review the decision of the Illinois Supreme Court:

I.

There Is No Substantial Federal Question Involved and No Conflict of Decisions on the Validity of Section 11-33 of the Municipal Code of Chicago.

In the Petition pending before this Court only one ordinance is being attacked by the petitioner. This is Section 11-33 of the Municipal Code of Chicago, which prohibits persons from interfering with a police officer in the discharge of his duties.

The constitutionality of this ordinance was first raised in the case of *City of Chicago* v. *Lawrence*, 42 Ill. 2d 461, decided May 28, 1969. In that decision the Illinois Supreme Court upheld the validity of the ordinance against arguments that it was vague and overbroad. That decision was appealed to this Court, and on November 17, 1969, after briefs were submitted by both sides, this Court, in treating the appeal as a Petition for Certiorari, denied the writ 396 U. S. 39 (1969).

The petitioner in attempting to persuade this Court to grant the writ, has cited and relies heavily upon the decision in *Gregory* v. *City of Chicago*, 394 U. S. 111 (1969). The petitioner properly states the reasoning used by this Court in reversing the Illinois Supreme Court, but fails to point out that the ordinance involved in that case was different than the one now under consideration. In *Gregory*, the defendants were charged with violating Section 193-1 of the Municipal Code of Chicago (disorderly conduct). Since the ordinance did not contain language making it a violation for refusing to obey a police officer's command to

disperse, any conviction under such an ordinance was improper. However, in the instant case the language of Section 11-33 of the Municipal Code of Chicago makes it clear that citizens are not to interfere with police officers in the discharge of their duty. Here the petitioner was not arrested because of the speech that he was making, but instead because he refused to obey a police officer's order to disperse at a time when violence had broken out and there was the threat of greater violence. This same type of police action has been sanctioned by this Court in *Feiner* v. *New York*, 340 U. S. 315 (1950).

The petitioner argues that the offense for which he was fined was not enumerated in the ordinance at the time of his arrest. Specifically he points out that his speech took place in July, 1967, and that he was tried the same month. Petitioner states that the Illinois Court's construction of this ordinance was not announced until more than two years later (Petition, p. 10).

Prior to the decision in *City of Chicago* v. *Lawrence*, 42 Ill. 2d 457 (May 28, 1969), *cert denied*, 396 U. S. 39 (November 17, 1969), the Illinois Supreme Court had not ruled on the constitutionality of Section 11-33 of the Municipal Code of Chicago. When this decision was handed down, it did not amount to a judicial enlargement of an existing ordinance but simply was a reasoned decision evaluating arguments on the constitutionality of the ordinance. The court's decision did not include any new types of conduct under the coverage of this provision, but stayed within the terms of the ordinance as drafted. The analogy which the petitioner attempts to draw to the case of *Gregory* v. *City of Chicago*, 396 U. S. 39 (1969) is completely without foundation in either law or fact.

II.

The Evidence in the Record Amply Supports the Court's Finding.

The record is absent any facts which show that the ordinance in question was applied to the petitioner so as to deprive him of his constitutional right of free speech and assembly. Prior to the date of arrest, the defendant had been making speeches against the war in Vietnam at the same location without incident. The police department knew of these speeches and detailed men there as a measure of precaution. There had been no arrests up to this time and there is no evidence showing that the police had interferred in any way with the petitioner's speeches. The location of these speeches was in the middle of an area known as "Old Town"; which is highly congested and a well known tourist attraction. The forum used was the public sidewalk which was about 12 feet wide at this point.

A crowd of about 100 to 200 persons gathered (Rept. of Proc. pp. 31, 35). About 11:00 p.m. the crowd had become loud and boisterous (Rept. of Proc. p. 31). The petitioner admitted that there was great tension in the crowd that night and that it was different from prior dates inasmuch as there were disturbances, near breakouts of fights, and burnings (Rept. of Proc. pp. 48, 49). Sergeant O'Malley an experienced officer who had previously attended 500 demonstrations was assigned to the crowd. He testified that two men who were aides to the petitioner came up to him and told him there was a fight beginning to form within the group and that the sign behind the defendant was pulled down and was being burned along with the pamphlets. One of the petitioner's sympathizers then came along and put it back up. Two spectators then tore the banner down for a second time. This angered the man who was holding the sign and a fight was about to ensue over

this incident when officer O'Malley appeared and calmed the situation. Some spectators then set fire to some leaflets (Rept. of Proc. pp. 40-42). It was only at this point that Sergeant O'Malley with the aid of other officers ordered the crowd and the speechmakers to disperse. The petitioner stated that the officers told him to move, but he refused and decided to remain. He informed the policemen that if they wanted to arrest him he would go with them.

From the above factual situation it is clear that the dialogue between the petitioner and the crowd created a tense situation. The audience reacted physically and there was present an imminent threat of continued violence. The acts of the police officers in arresting the petitioner were motivated solely by their concern for the preservation of order and protection of general welfare. The record lacks any evidence that the acts of the police were a "cover" for the suppression of defendant's views and opinions. This is manifested by the fact that on prior occasions no attempt was made to silence the defendant. The purpose of the police was not to prevent speeches, but rather to regulate the crowd that gathered to listen. The police officers had a duty to maintain order in the streets and the petitioner's repeated refusal to obey their command to disperse interfered with this duty.

III.

Section 11-33 of the Municipal Code of Chicago Is Not Vague and Overbroad.

The issue of whether the City of Chicago's interfering with a police officer ordinance is vague or overbroad in its terms has been raised and passed upon in the case of *City of Chicago* v. *Lawrence*, 42 Ill. 2d 461 (1969), *cert. denied*, 396 U. S. 39 (1969). The Illinois Supreme Court stated (p. 464):

> "As for the vagueness objection it is true that conduct prohibited by ordinance or statute must be described in terms definite enough to serve as a guide to those to whom it applies. But 'interfere with' and 'hinder' are not under all circumstances terms too indefinite to be applied. An ordinance may describe conduct by their use where the meaning is clear enough to people contemplating such behavior, the test being whether they convey sufficient definite warning as to proscribed conduct when measured by common understanding and practices (Cf. *Jaffe* v. *Cruttenden*, 412 Ill. 606). We do not think that under a reasonable construction the ordinance in the case at bar can be said to be unconstitutionally vague and indefinite. An ordinance or statute must be read in a sensible way, without giving necessarily general terms like 'interference' such a literal application as would lead to undue restrictions on speech or some other constitutionally protected conduct. No rule of construction requires the ordinance before us to be given an absurd effect which, although within its letter, is contrary to its spirit."

This same reasoning was adopted by the Illinois Supreme Court in the case at bar (Appendix p. 3A). The petitioner was found guilty under the terms of the ordinance as it existed at the time of his arrest. There was no newly-announced construction of the ordinance by the Illinois Supreme Court, as petitioner suggests (Petition, p. 12), but merely an application of the terms of the ordinance to the conduct of the petitioner.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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